

Unfair Trade Practices and Consumer Protection Law

73 P.S. §§201-1 - 201-9.2

Often referred to as Pa's UDAP statute.

§201-2. Definitions

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- (3) "Trade" and "Commerce" are defined to include almost any type of consumer transaction, even a residential lease (Commonwealth v. Monumental Properties, 329 A.2d 812 (1974)) or real estate transaction. A one-time seller is covered.
- (4) "Unfair methods of competition" and "**unfair or deceptive acts or practices**"(UDAP) are defined as any one or more of the following:
- (i) Passing off goods or services as those of another;
 - (ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
 - (iii) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
 - (iv) Using deceptive representations or designations of geographic origin in connection with goods or services;
 - (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;
 - (vi) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;
 - (vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
 - (viii) Disparaging the goods, services or business of another by false or misleading representation of fact;
 - (ix) Advertising goods or services with intent not to sell them as advertised;
 - (x) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

- (xi) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (xii) [Purchases with benefits contingent on post-purchase referrals];
- (xiii) [Chain-Letter Plans, Pyramid Clubs and similar schemes.]
- (xiv) Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made;
- (xv) Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
- (xvi) Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing;
- (xvii) Making solicitations for sales of goods or services over the telephone without first clearly, affirmatively and expressly stating [those things enumerated in the statute].
- (xviii) Using a contract, form or any other document related to a consumer transaction which contains a confessed judgment clause that waives the consumer's right to assert a legal defense to an action;
- (xix) [Mail and telephone solicitation shipping time requirements];
- (xx) [New motor vehicle rustproofing offer restrictions];
- (xxi) **Engaging in any other fraudulent or deceptive conduct, which creates a likelihood of confusion or of misunderstanding.** [often referred to as the catchall provision]

§201-3. Unlawful acts or practices & exclusions

Declares (i)-(xxi) above unlawful.

Also excludes any mediums publishing advertisements in good faith, without knowledge of any violation.

§201-3.1. Regulations

The Attorney General is authorized to adopt rules and regulations necessary for the enforcement and administration of this act.

§201-4. Restraining prohibited acts

The Attorney General or a District Attorney can bring an action for injunctive relief if that proceeding would be in the public interest.

§201-4.1. Payment of costs and restitution

In an action by the AG or DA, the court can order payment of costs and restitution for injured parties.

§201-5. Assurance of voluntary compliance

The AG may accept an assurance of voluntary compliance.

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§201-6. Deleted by amendment

§201-7. Contracts: effect of rescission

Right to rescind door-to-door or telephone sales within three business days. Required notice.

§201-8 Civil penalties

Penalties for failure to comply with an injunction or assurance of voluntary compliance as discussed in sections 4 and 5 above.

§201-9 Forfeiture of franchise or right to do business; appointment of receiver

Upon petition by the Attorney General, the court may order the dissolution, suspension or forfeiture of the franchise or right to do business of any person, firm or corporation which violates the terms of an injunction issued under section 4. In addition, the court may appoint a receiver of the assets of the company.

§201-9.1. Powers of receiver [appointed pursuant to 201-9]

§201-9.2. Private actions

(a) Any person who purchases or leases goods or services **primarily for personal, family or household purposes** and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover:

- i. actual damages or one hundred dollars (\$100), whichever is greater.**
- ii. up to three times the actual damages**
- iii. such additional relief as it deems necessary or proper**
- iv. costs and reasonable attorney fees.**

(b) Any permanent injunction, judgment or order of the court made under section 4 of this act shall be prima facie evidence in an action brought under section 9.2 of this act that the defendant used or employed acts or practices declared unlawful by section 3 of this act.

§201-9.3. Dog Purchaser Protection

Requires a health record and a health certificate issued by a veterinarian or a guarantee of good health from the seller. The statute specifies the information to be included in a health record, a health certificate issued by a vet, or a guarantee of good health by the seller. The statute also sets forth very specific remedies and when those remedies will and will not be available.

The Great Fraud Controversy of 201-2(4)(xxi), aka the Catchall

This prohibition was amended in 1997. It was formerly numbered 2(4)(xvii) and prohibited only “other fraudulent conduct,” rather than “other fraudulent or deceptive conduct.” Cases interpreting the old statutory language were split regarding whether the consumer should be required to prove the elements of common law fraud, with a number of Superior and Commonwealth Court decisions requiring it. Then in 2007, the Supreme Court, interpreting the pre-amendment version of the statute, held that justifiable reliance is required for consumer claims under the catchall. Toy v. Metropolitan Life Ins. Co., 928 A.2d 186 (Pa. 2007). Some decisions have, without noting the amendment, recited the language of older decisions that required a showing of common law fraud.

This history is important because opposing counsel in these cases will always cite the Toy case and are often successful with judges who don't want to bother with the convoluted, inconsistent caselaw and legislative intent.

The courts that have actually examined the issue closely have concluded, rightfully, that the legislative change is intended to broaden that catchall so that common law fraud is not required. Grimm v. Washington Mutual Bank, 2008 U.S. Dist. LEXIS 55628, 2008 WL 2858377 (W.D. Pa. July 22, 2008), Hansford v. Bank of America, 2008 WL 4078460, 2008 U.S. Dist. LEXIS 65502 (E.D. Pa. Aug. 22, 2008); Wilson v. Parisi, 549 F.Supp.2d 637 (M.D. Pa. 2008). For additional cites and a thorough discussion of this issue, see Carolyn Carter's “Pennsylvania Consumer Law,” section 2.5.4.21 (with 2010 supp.)

It is a good idea to avoid basing your case solely on the catchall if possible, to avoid this issue.

Notable violations of the catchall:

1. A landlord's egregious and continuous failure to maintain residential premises in a habitable condition. In re Clark, 96 B.R. 569 (Bankr. E.D. Pa. 1989)
2. Conversion of a tenant's personal property by a landlord. In re Clarkson, 105 B.R. 266 (Bankr. E.D. Pa. 1989)
3. Foreclosure rescue scams, i.e. misrepresentation by a “homesaver” that he would sell the debtor's home back to her, or sell it to a third party and return her a significant part of the proceeds. In re Bryant, 111 B.R. 474 (E.D. Pa. 1990)
4. An insurance company's promise of benefits it never intended to pay, premature termination of coverage, and miscalculation of benefits. Schroeder v. Acceleration Life Ins. Co., 972 F.2d 41 (3d Cir. 1992)

5. Failure of a finance company to disclose that obtaining a new loan may be much less expensive than refinancing the existing loan. In re Milbourne, 108 B.R. 522 (Bankr. E.D. Pa. 1989)
6. Promising one rate index for an adjustable rate mortgage, but then using a different, higher one. Le Bourgeois v. Firsttrust Savings Bank, 25 Phila. 249 (C.P. 1993)
7. Misrepresenting the savings that consumers would receive through a prescription drug plan. Commonwealth v. Peoples Benefit Services, 895 A.2d 683 (Pa. Cmwlth. 2006)

Additional claims:

- Add UTPCPL violation to violations of any other consumer protection law, since unlawful conduct itself is unfair and deceptive.
- Many consumer protection statutes have codified statements that indicate that the practices they prohibit are unfair and deceptive and therefore a violation of UTPCPL.
- The FCEUA, among others, explicitly states that violating that statute is also deemed a violation of UTPCPL.